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In the Supreme Court of the United States

October Term, 1973

No. 73-950

WOODROW MEGEL and LOLA MEGEL,
Petitioners,

vs.

CITY OF PAPILLION, LYNN LANDGREN, MAYOR, and ROBERT A. WALLACE, IDA MAE CHADWICH, LOUIS HAUSCHILD, JR., MAURICE MORAVEC, WILLIAM OLIVER, JR., FRANK ARNEY, FRANK SMITH, ALLEN RIBBE, COUNCILMEN,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Nebraska

MEMORANDUM FOR RESPONDENTS IN OPPOSITION

EUGENE T. ATKINSON of
ATKINSON & KELLY
1201 Golden Gate Drive
Papillion, Nebraska 68046
DAVID S. LATHROP of
LATHROP, ALBRACHT & DOLAN
460 Continental Building
Omaha, Nebraska 68102
ORVILLE B. ENTENMAN
1201 Golden Gate Drive
Papillion, Nebraska 68046
Attorneys for Respondents

PRIESMAN GRAPHICS — OMAHA, NEBRASKA

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MEMORANDUM FOR RESPONDENTS IN OPPOSITION

1. Petitioners are the owners of a residential dwelling in the City of Papillion, Nebraska. Heretofore, certain surface water was discharged upon petitioners' property by the respondents.

2. Complex litigation in Nebraska trial courts determined that the discharge on petitioners' property by respondents was wrongful but that no damages were incurred.

3. The Nebraska trial court ordered that respondents:

> " . . . enjoined from in any way causing or permitting surface water from its streets, alleys, and sewers presently and hereafter constructed and from any street, alley and sewer hereafter annexed within the drainage area in which the property of the plaintiffs is situated, to flow in, upon, through or against any of the property of the plaintiffs . . . "

4. The City Council of Papillion, Nebraska, determined that the only feasible manner of correcting the water problem was to condemn the petitioners' property or a portion of it.

5. Petitioners had an ex parte restraining order entered restraining the City of Papillion from instituting condemnation.

6. The respondents are here complaining of the dissolution of the restraining order, asserting that to condemn rather than divert the water would be in violation of the trial Court decree ordering a cessation.

ARGUMENT

The City Council of the respondents has an obligation to the taxpayers of the City of Papillion, namely to correct the surface water problem in vicinity of petitioners' home in the most feasible and least expensive manner possible. In the judgment of this body the problem cannot be corrected consistent with this duty other than by condemnation. The situation is analogous to a school district, whose children play on the adjoining property of another. The neighbor obtains a restraining order to keep the

children off and ordering the school district to construct a fence. There being no other place for the children to play, the school district condemns the neighbors property for a playground.

No federal constitutional questions are presented and to the extent possible the petitioners' rights will be protected by the condemnation laws of the State of Nebraska properly supervised by the courts of Nebraska.

It is, therefore, submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

EUGENE T. ATKINSON of
ATKINSON & KELLY
1201 Golden Gate Drive
Papillion, Nebraska 68046
DAVID S. LATHROP of
LATHROP, ALBRACHT & DOLAN
460 Continental Building
Omaha, Nebraska 68102
ORVILLE B. ENTENMAN
1201 Golden Gate Drive
Papillion, Nebraska 68046
Attorneys for Respondents